

# **EXHIBIT E**

**ORIGINAL**

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HLH/RBH

**FILED**  
**SAN MATEO COUNTY**

OCT - 5 2010

Clerk of the Superior Court

By

DEPUTY CLERK

Attorneys for Plaintiff  
NEW ENTERPRISE ASSOCIATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

New Enterprise Associates, Inc., a Delaware  
Corporation

Plaintiff,

v.

Michael Zeleny and DOES 1-25,

Defendants.

Case No. **CV 499465**

**COMPLAINT FOR TRESPASS**

COMPLAINT

**PARTIES**

Plaintiff New Enterprise Associates, Inc. ("NEA" or "Plaintiff") hereby alleges as follows:

1. NEA is a Delaware corporation with its principal place of business in Menlo Park, California. NEA was previously incorporated in Delaware under the name NEA Development Corporation.

2. Plaintiff is informed and believes that Defendant Michael Zeleny ("Zeleny") is an individual residing in Los Angeles, California.

3. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as Does 1 through 25, inclusive, and therefore sues said parties by such fictitious names. Plaintiff will seek leave to amend this complaint to set forth the true names and capacities of said parties when the same may be ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of said Doe defendants is in some manner liable for the conduct, acts and injuries set forth herein by acting in concert with the named defendant, by assisting the named defendant or otherwise, and that Plaintiff's damages as alleged herein were proximately caused by said fictitiously-named defendants.

**FACTUAL ALLEGATIONS**

**A. 2009 Trespass**

4. At all times relevant to this Complaint, including on October 27, 2009, NEA has been the lawful tenant pursuant to a written lease, and has been in possession and control of certain real property situated at 2855 Sand Hill Road, Menlo Park, San Mateo County, California, within the confines of a private office park owned by The Board of Trustees of the Leland Stanford Junior University ("Stanford"). In addition, NEA had and has possessory interests in the walkways leading to its business offices located in 2855 Sand Hill Road, the common tenant grounds of the office park in which 2855 Sand Hill Road is located, including the internal street and entryways surrounding the building, and the parking lots serving employees, clients and prospective clients, all as pictured and defined in Exhibit A. The private property office park pictured in Exhibit A in which NEA's building at 2855 Sand Hill Road and the other property described above are located, including the buildings leased to other tenants by

1 Stanford, the internal street, walkways, entryways and parking lots described, are referred to in  
2 this Complaint as the "Property."

3 5. On October 27, 2009, and for a period of approximately one year before that date,  
4 NEA was using the Property as business offices for its venture capital and growth equity firm.  
5 NEA's offices located in the Property are used to transact the business of NEA and its affiliated  
6 entities, including, among other things, for meetings with current and prospective business  
7 partners, investors, portfolio company founders and executives.

8 6. On or about October 27, 2009, Defendant Zeleny and at least one associate,  
9 without the consent or authority of, and against the will of, NEA and Stanford, entered onto the  
10 Property. Defendant Zeleny and his associates placed several large posters on the landing  
11 immediately outside the front door of NEA's business offices, and confronted, videotaped, and  
12 questioned individuals who walked down the entryway to or from the front entrance to NEA's  
13 offices. Zeleny and his associates remained on the premises for approximately four hours.

14 7. Zeleny's unlawful trespass on October 27, 2009, damaged NEA in an amount to  
15 be determined.

16 **B. 2010 Trespass**

17 8. On or about September 27, 2010, Zeleny and three associates again entered the  
18 Property without any right or authority to do so, and without NEA's or Stanford's consent. In  
19 entering the Property, Zeleny disregarded explicit, posted signs stating: "PRIVATE  
20 PROPERTY-NO TRESPASSING, NO LOITERING-AUTHORIZED BUSINESS USE  
21 ONLY-ALL OTHERS WILL BE CITED AND/OR TOWED." Although Zeleny was aware  
22 that he was on private property and that he was unwelcome, he nonetheless remained there  
23 several hours.

24 9. On or about September 28, 2010, Zeleny and several associates again entered the  
25 Property, bringing with them a large motor-home. While on the Property, Zeleny and his  
26 associates began engaging and videotaping persons passing by, comprising individuals with  
27 business at NEA or elsewhere in the office park, including specifically those attempting to enter  
28 or exit NEA's offices. One of Zeleny's associates was videotaping these interactions, while

1 another was playing the bagpipes. As with his previous entries to the Property, Zeleny and his  
2 associates had no permission or authority to enter the Property, and stayed on the Property in  
3 disregard of signs prohibiting their presence

4 10. On or about September 29, 2010, Zeleny and several associates again entered the  
5 Property, resuming their previous activities on the Property. They did so without the consent or  
6 authority and against the will of NEA and Stanford. On September 29, 2010, NEA advised  
7 Zeleny and his associates that they had no authority from either NEA or Stanford to be on the  
8 Property. NEA further demanded, on behalf of NEA and Stanford, that Zeleny and his  
9 associates leave the Property immediately and not return. Zeleny and his associates refused  
10 NEA and Stanford's demand.

11 11. Zeleny and several associates entered NEA's Property twice more – on  
12 September 30, 2010 and on October 1, 2010, resuming their activities on the Property, and  
13 staying most of the business day on each occasion. On September 30, Zeleny's associates were  
14 playing a saxophone, two accordions, and the bagpipes. As before, Zeleny and his associates  
15 were present on the Property without the consent or authority and against the will of NEA and  
16 Stanford. Again on September 30, NEA advised Zeleny and his associates that they had no  
17 authority to be on the Property, and demanded, on behalf of NEA and its landlord, that Zeleny  
18 and his associates leave the Property immediately and not return. Zeleny refused to comply.

19 12. Zeleny threatens and asserts that he and his associates will continue to trespass on  
20 the Property, and thereby continue to deprive NEA of its right to possession and use of the  
21 Property. NEA is informed and believes, and on the basis of that information and belief alleges,  
22 that unless restrained by this court, Defendants will continue to trespass on the Property. Such  
23 conduct by Defendants has injured NEA and will further injure NEA, including causing  
24 irreparable harm to NEA. NEA has been and will be deprived of full enjoyment and use of its  
25 Property by virtue of Defendants' continuing trespass. The damages proximately resulting from  
26 Defendants' continued trespass are extremely difficult, or impossible, to assess accurately.

27 **CAUSE OF ACTION FOR TRESPASS**

28 13. NEA hereby repeats and alleges paragraphs 1 through 12, inclusive, and

1 incorporates those paragraphs as though set forth in full herein.

2 14. NEA began occupying the Property in November 2008. NEA continues to do so  
3 presently, and will continue to do so for the foreseeable future.

4 15. On multiple occasions, Defendant Zeleny intentionally entered the Property,  
5 without permission and against the will of NEA and its landlord, and he caused others likewise  
6 to enter the Property.

7 16. NEA, as well as NEA's landlord, did not give Defendants permission to enter the  
8 Property, and demanded that Defendants leave.

9 17. As a result of Defendants' conduct, NEA has been deprived of full use and  
10 enjoyment of its Property and has suffered actual damages in an amount to be proven at trial.

11 18. Defendants' conduct was a substantial factor in causing the damage and injury to  
12 NEA.

13 19. Defendants' wrongful acts as described herein were intentional, malicious, and  
14 oppressive, and were committed with the intent to injure NEA, in willful and conscious  
15 disregard of NEA's rights, such that NEA is entitled to recover punitive and exemplary damages  
16 against Defendants in an amount which is sufficient and appropriate to punish Defendants and  
17 deter them from committing similar such acts in the future

18 **PRAYER FOR RELIEF**

19 WHEREFORE, NEA prays for judgment against Defendants, and each of them, as  
20 follows:

21 A. That Defendants be enjoined during the pendency of this action, and permanently  
22 thereafter, from entering the Property.

23 B. For compensatory and consequential damages in an amount to be proven at trial.

24 C. For punitive and exemplary damages in an amount sufficient and appropriate to  
25 punish Defendants and deter them from committing similar acts in the future.


26 D. For such other and further relief as the court may deem fair, just, equitable and  
27 proper.

28

1 Date: October 5, 2010

HOGAN LOVELLS US LLP

2  
3 By



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**EXHIBIT**

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**EXHIBIT**



